

HR and Employment Law Update
&
“Intolerance of Intolerance” Diversity Awareness Corner



Beyond This Place... There Be Dragons!

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**OFF DUTY BIGOTED COMMENTS BY POLICE OFFICER:
FREE SPEECH vs. DUTY OF LOYALTY**



Columbus City Police Officer: Susan L. Purtee

YouTube.com has posted some very controversial videos involving a Columbus City Police Officer. Susan L. Purtee, a 60 year old 15 year veteran of the Columbus Police force, and her sister Barbara Gordon-Bell, 52, who call themselves “The Patriot Dames” and the “Subie Sisters,” have created an entire collection of amateur online videos for their website site in which they disparage Jews, blacks, Cubans, liberals, illegal immigrants and a few other minority groups.

In one of these videos, Purtee and Bell begin the segment by stating clearly that, “It’s the Jews. They’re the problem.”

These women then go onto state that “Mel Gibson was right,” (If you remember from last year, Mel went on a rant screaming that “Jews are responsible for all the wars in the world.”) and that “Joseph McCarthy was the greatest man of the 20th century” because he got the Jews out of television and the movies.

In another segment, Bell holds up a sign that says, “Jews are the Problem.”

In another video addressing their opinions against blacks, they begin their video with racist songs about blacks mimicking “Buckwheat” from “The Little Rascals,” the stereotypical “Mammy,” and “Rastas” of the Cream of Wheat fame.

In these videos, Purtee is not in uniform, nor does she identify herself as a Columbus Police Officer. However, the sisters’ website does state that Purtee works in law enforcement.

Criticism came swiftly after the videos were published. Since then, according to Sgt. Richard Weiner, a Columbus Police Division spokesman, Purtee has been taken off of the streets and reassigned to a desk job while the Columbus Police Department of Internal Affairs investigates the matter.

“We were deeply disturbed by the message of these videos, which is anti-Semitism, racism and hate,” said Shari Kochman, Ohio regional director for the Anti-Defamation League. “It is frightening that such hateful views would be held by a member of the Columbus force.”

Columbus Mayor Michael B. Coleman was also quick to respond.

“I am highly concerned that this unacceptable conduct will reflect negatively on the entire division and ... Columbus,” Coleman said.

In a letter written by Mayor Coleman on August 28, 2007, calling for a formal investigation of Police Officer Purtee, Coleman wrote:

“I am personally offended by her racist and anti-Semitic comments, and I believe our citizens should be equally offended. As Mayor, I am highly concerned that this unacceptable conduct will reflect negatively on the entire Division and the City of Columbus. Clearly, Officer Purtee is not representative of our Division’s many great Officers. While we respect the right of free speech, we also demand that every Officer meets the highest standard of conduct on and off the job. In my opinion, Officer Purtee’s conduct falls far below this City’s expectations.”

“Few positions in American society entail and demand more implicit trust and respect than serving the public as a Police Officer. The Columbus Division of Police is among the nation’s best, and each officer takes an oath to protect the lives and rights of all citizens. In recent years, the City and Division worked hard to address Department of Justice and citizen complaints of discrimination, by implementing new diversity training, higher standards, video cameras in patrol cars, increased minority recruiting, and other initiatives to increase accountability and sensitivity of Officers interacting with residents. These actions and strong neighborhood policing efforts with Community Liaison Officers have helped rebuild bridges of trust with our city’s many diverse residents, and the conduct of Officer Purtee threatens that progress.”

The Columbus Police Department’s directives state that officers:

“... shall conduct themselves at all times, both on and off duty, in such a manner as to reflect favorably on the division. Unbecoming conduct is behavior that implicitly or explicitly brings the division into disrepute, reflects discredit upon the individual as a member of the division, or impairs the operation or efficiency of the division or the individual. This includes, but is not limited to, derogatory comments, gestures or insinuations.”

If it is determined that a violation of this policy has occurred, Purtee’s discipline can range from a suspension to termination.

However, Jeffrey Gamso, legal director of the American Civil Liberties Union of Ohio, said the case is **tricky** because of free-speech concerns.

“It’s all **nuance**,” he said. “We all have ideas that somebody else may find offensive, or at least many of us do. The question is, ‘how much is it tied to your work? Does it affect your work?’ The answer to that is, you look at her police work, you don’t look at her ideas,” he said. “If she’s able to keep her personal views from affecting her job performance, then her personal views shouldn’t affect her job.”

Further, Jim Gilbert, president of the Fraternal Order of Police Capital City Lodge No. 9, said the FOP is legally bound to represent Purtee during the investigation, but stressed that the union “does not endorse or condone racism or anti-Semitism in any form.”

Gilbert also told WBNS-10TV in Columbus, Ohio that, “... Purtee is entitled to her opinion.”

Columbus civil rights attorney Benson Wolman told WBNS-10TV that he viewed the online video and called it offensive.

“Just because you become a public official doesn’t mean you give up your right to free speech,” Wolman said. “Pinning on a badge does not strip the officer of her constitutional rights.”

“Those rights ought to include the right to make stupid statements, dumb statements and offensive statements,” Wolman said.

The videos provide strong fodder for defense attorneys with cases involving Purtee, said local lawyer R. William Meeks. Good lawyers are always trying to impeach the credibility of all witnesses against their clients, police included, Meeks said. “An obvious area of impeachment is bias,” Meeks he said told The Columbus Dispatch.

“Judges typically give defense attorneys a lot of leeway to explore bias,” Meeks said. “And the problems that occurred with Mark Fuhrman, the racist police officer who testified against O.J. Simpson in his murder case, show how bias can torpedo a prosecution.”

Meeks then concluded that, “You can basically turn a case upside-down because of it.”

In another WBNS-10TV interview, Columbus Attorney Sam Shamansky said, “... every time that you can establish that a Police Officer has a built in bias or prejudice, it gives you a leg up that you would never dream of having in a million years.”

If you would like to judge for yourself, you can view these videos by following these links:

“Patriot Dames” videos about Jews:

<http://www.youtube.com/watch?v=HqD9a6iqnJM>

<http://www.youtube.com/watch?v=FCmwgLiesWY&mode=related&search>

<http://www.youtube.com/watch?v=d86FhQIAZIk&mode=related&search>

Patriot Dames videos about blacks:

http://www.youtube.com/watch?v=v1S0KB_kKW4

<http://www.youtube.com/watch?v=XtjXkzZyUIQ&mode=related&search>

If you would like to view their website, go to:

<http://www.youtube.com/subiesisters>

LEGAL ANALYSIS

For those of you who have been keeping up with the Employment Law Updates, you will readily spot the error in the comments made by some of the officials and attorneys who have voiced their legal opinion on Officer Purtee's free speech rights. Some of these opinions have stated that:

- This is a “tricky” issue, and
- “Those rights ought to include the right to make stupid statements, dumb statements and offensive statements,” and
- “Just because you become a public official doesn't mean you give up your right to free speech. Pinning on a badge does not strip the officer of her constitutional rights,” and
- “You look at her police work, you don't look at her ideas.”

As far as current law in this country is concerned, nothing could be further from the truth. In fact, this entire matter is a decided issue.

EMPLOYEE DUTY OF LOYALTY: U.S. SUPREME COURT: The Roe Case

In City of San Diego v. John Roe, No. 03–1669 (S. Ct. 2004), John Roe, a police officer with the city of San Diego, was fired for selling videotapes on eBay that showed him stripping off a police uniform and engaging in lewd acts, along with other related unsavory behavior. Roe sold these videos, along with other adult items, on the “adults-only” section of eBay. In his eBay profile, he identified himself as being in law enforcement and used a police-related user name. However, nothing in his videos or on his website that indicated he was a police officer with the city of San Diego.

Roe's supervisor discovered some of his eBay offerings. The city confronted Roe and ordered him to stop selling these items, but he failed to fully comply. The city then fired him.

Roe filed a lawsuit claiming that the city violated his First Amendment right to free speech when it fired him. On December 6, 2004, a unanimous U.S. Supreme Court upheld Roe's termination, holding that his right of free speech *was not violated*.

In reaching its decision, the Court noted that a government employee does not give up all of his First Amendment rights that are enjoyed by other U.S. citizens when he becomes a public employee, although public sector employees *do give up most* of these rights. The Court then stated that a government employer may impose certain restraints on its employees' speech *that would be unconstitutional if applied to the general public*. Therefore, when a citizen becomes a public sector employee, his or her constitutional rights may be restricted more than those of private citizens.

In general, the U.S. Supreme Court held that the limits on a public employer's right to restrict employees' speech fall into two categories.

1. First, the off duty comments made by a public sector employee that relate to “**matters of public concern**” must be balanced against the interest of the state, such as the interests of the employer in promoting the efficiency of the public services it provides. However, a matter of “public concern” must be a subject of **legitimate news interest**, which is a subject of general interest and of **value** and **concern** to the public. Typically, that would involve government policies that are of interest to the public at large, **NOT** policies that apply only to the employees of the public entity that relate to the employer's right to run its operations.
2. The limits of a public employer's control over employee speech are also set forth in cases in which the government employees speak or write on their own time about topics **unrelated** to their employment. That speech will have First Amendment protection absent some **strong governmental justification** to regulate it.

The Court first concluded that Roe's “speech” in this case was **not** a matter of public concern. Officer Roe's speech (his nude videos) was not a “**legitimate news interest**,” so Officer Roe did not enjoy any protection for his speech under this first category.

The Court also looked to the second prong of its test: Was Roe's speech related to his employment? The Court held that Roe's conduct **was closely related to his employment, which gave the San Diego Police Department the right to regulate his speech.**

The Court reasoned that Roe's speech was **injurious to the reputation of the San Diego Police Department, even though no where on his website or in his videos did Roe indicate that he was a police officer with the city of San Diego.** The mere fact that Roe indicated that he was in law enforcement was enough to have this matter relate to his employment and the city of San Diego Police Department.

The Court concluded that the speech in question, Officer Roe's off duty conduct, was detrimental to the mission and functions of his employer. In short, his behavior was seen as detrimental to the reputation and goals of the San Diego Police Department. As a result, Officer Roe's termination was allowed to stand. Of course, Officer Roe still had his right of free speech as a private citizen ... he just didn't have a job any longer.

Therefore, the Supreme Court ruled that Roe's firing **did not** violate his Constitutional rights because the San Diego Police Department had a **strong justification** to regulate this conduct:

Its reputation. Roe's off duty speech was viewed as being injurious to the reputation of the San Diego Police Department.

Readers should not confuse the logic of the Court with stripping away all of Roe's free speech rights under our judicial system. If Officer Roe did not have *any* free speech rights, as is the case in some countries, the government would have simply come in and shut down his website and pulled his videos from the market.

The morale of the story: You have a right of free speech. You do not have a right to a job. Having a job is a privilege ... not an entitlement.

If you compare the Roe decision to Officer Purtee's situation, you will see *many* striking similarities:

LEGITIMATE PUBLIC CONCERN ANALYSIS

- The U.S. Supreme Court held that Officer Roe's speech, which was comprised of his nude and lewd acts on video, was not a matter of legitimate public concern, or in other words, it did not have any "**legitimate news interest**" that involved governmental policies that would be of interest to the public at large.
- Likewise, it would be hard to make the case that Officer Purtee's hate messages and bigoted opinions regarding various groups of minorities is a "**legitimate news interest**" that involve government policies that are of interest to the public at large ... other than for the pure shock value of her appalling statements.
- Therefore, just as the U.S. Supreme Court found that Officer Roe's speech was not of any "**legitimate news interest**," other than just its shock value to the public, and could therefore be terminated for his off-duty speech, Officer Purtee's videos will surely also be viewed by the courts as not being of any "**legitimate news interest**" that involves government policies that are of interest to the public at large ... other than for their "shock value." Officer Purtee would therefore not enjoy any First Amendment Free Speech protection.

"INJURIOUS TO THE DEPARTMENT" ANALYSIS

- In the Roe case, Officer Roe engaged in off duty speech that was considered offensive and detrimental to his job and to the city's reputation by the Police Department and city officials. In Officer Purtee's situation, she also engaged in off duty speech that could easily be considered offensive and detrimental to the city's reputation by Columbus Police Department and city officials.
- In the Roe case, Officer Roe did not identify himself as an officer for the city of San Diego, but merely as a police officer. In Officer Purtee's situation, she did not identify herself as an officer for the city of Columbus either, but merely indicated that she worked in law enforcement on her website.

Therefore, just as Officer Roe argued in his case, Officer Purtee's argument that she has a right of free speech that will save her from disciplinary action is just not going to hold up under the United States Supreme Court's holding in the Roe decision. Under the Roe decision, public sector employees *do* in fact have more restrictions placed upon their rights of free speech as far as retaining their jobs is concerned. Therefore, Columbus civil rights attorney Benson Wolman's comments that, "Just because you become a public official doesn't mean you give up your right to free speech," and "Pinning on a badge does not strip the officer of her constitutional rights," and "Those rights ought to include the right to make stupid statements, dumb statements and offensive statements," is a clear misunderstanding of the law.

The Supreme Court's rulings in this area of the law goes hand-in-hand with the common law duty of loyalty employees owe to their employer when they accept a paycheck. All employers, including public employers, have the right to manage their workplaces, which includes limiting employee actions and speech that might prove harmful to the employer. Employers have the right to maintain discipline, high morale and good order, as the employer generally sees fit when these issues might interfere with the "mission and functions of the employer." Allowing such bullies as Purtee to do whatever they want to harm the reputation of the organization can be cause for terminating their employment under the law.

UNION ANALYSIS

Clearly, the law is not the only consideration here. It is also important to consider the union implications of Officer Purtee's situation. The answer here is short and sweet:

What does the union contract say about such comments as being serious offenses?

Will the union protect Officer Purtee ... even at the expense of the city's ability to run its department? Well ... the union officials in this situation have already said, "Yes." The union is going to protect Officer Purtee.

The matter with the union must still be resolved and, again, the answer will pretty much rest with what is written into the union contract.

However, consider the larger policy issues involved with the union's stance on this topic as this discussion continues.

BRAINWASHED!

Unfortunately, whenever such situations arise, we instantly turn to our attorney's for the final say as to whether or not we can fire an employee. How many times have you heard some attorney tell you, "Oh, you can't do that! You might get sued." "Oh, you can't do that ... you might get sued," "Oh, no! You *really* can't do that! You might get sued."

Why? Their fear of the law dictates 90% of what they do. Good business judgment is often abandoned in order to make an employment-related decision that "saves the organization" from an *immediate lawsuit*. In exchange for this immediate and temporary oasis of legal safety, the organization destroys its employee morale and desire to excel while also increasing its chances of incurring a lawsuit and losing that lawsuit into the future.

Far too many leaders do not **really** understand the law. So, they believe just about anything their attorneys tell them. This fact, coupled with the fact that most attorney's do not **really** understand employee relations and honestly believe that the worst thing that can happen to an organization is that it gets sued, results in far too many of our leaders becoming "**brainwashed.**" They are brainwashed into "selling out" their good employee relations practices, which is most likely the biggest part of their budget, as soon as they hear a lawyer say:

"Oh, no! You'd better not do that. You might get sued!"

We have been trained so well that we in the business community now react like one of Pavlov's dogs whenever we are told, "Oh, don't do that!" by an attorney. Whenever any issue with an employee arises, management runs to the corner and reacts to the situation out of fear for the law.

AS A RESULT, TRUE "RISK ASSESSMENT" HAS ALL BUT DISAPPEARED!

In true risk assessment, one must consider all of the various risks associated with a decision. This means the decision maker must assess the risks of a situation against the "**PROBABILITY**" of harm and the "**CONSEQUENCE OF ERROR**" of making a bad decision.

In reality, getting sued is not the worst thing that can happen to an organization ... nor is it even the second worst thing that can happen, or even the third.

What is the worst thing that can happen?

#1 WORST THING THAT CAN HAPPEN: YOU GET SHOT!

In America, according to the Bureau of Labor Statistics (“BLS”), three people go into work everyday and they are murdered. **EVERYDAY.**

It is important to understand that these people will not die falling off of scaffolding ... nor will they get killed in a car accident. Three times a day, someone will enter an American workplace and murder an employee. In fact, according to the BLS, murder has now become the **second leading cause of death** in American workplaces ... and murder is now the **leading** cause of death in American workplaces for women. (Men must be better at “ducking.” Chivalry is clearly dead.)

If you think about it, in 2007 we saw the worst school shooting in American history. Thirty-three people were killed at Virginia Tech. While that was a tragedy, it is also just a drop in the bucket.

We have a Virginia Tech in American Workplaces every eleven days, which is two a month ... and that is what we call “normal.”

Further, over 1,000,000 people are physically assaulted in American workplaces each year. This means 18,000 people went into work this week and they ended up needing either first aid or an emergency room visit because someone snapped and put a stapler or a coffee cup upside their head.

But then ... look on the bright side: **AT LEAST YOU DIDN'T GET SUED!**

Retaining “problem” people in the workplace, or “trolls,” whether they are rank-and-file employees or managers, increases our levels of distress, which increases the massive amounts of cortisol flowing through our brains, eroding our memory systems and creating the basis for long term depression for everyone and decreasing morale ... which makes the workplace more dangerous for everyone. In fact, most people who commit acts of workplace violence have been with the organization for **more than five years.** (Bureau of Labor Statistics)

Why is this important? Because as the distress builds ... and builds ... and builds up over time until people reach their “breaking points” as the cortisol flows and damages our brains. In the end, someone finally snaps and the staplers and coffee cups go flying. However, if management deals with the poor behavior of its “problem” people early, if it has the “guts” to do that, then these incidents of workplace violence would be **greatly** reduced ... if not eliminated entirely.

So, let's tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!) in Officer Purtee's case.

**WHAT IS THE PROBABILITY OF HAVING AN INCIDENT OF
WORKPLACE VIOLENCE IF PURTEE IS TERMINATED?**

GREATLY REDUCED

**WHAT IS THE PROBABILITY OF HAVING AN INCIDENT OF WORKPLACE
VIOLENCE IF PURTEE IS NOT TERMINATED?**

GREATLY INCREASED

**WHAT IS THE CONSEQUENCE OF ERROR IF YOU ARE WRONG AND
HAVE AN INCIDENT OF WORKPLACE VIOLENCE?**

POTENTIALLY CATESTROPHIC!!!

Clearly, getting sued is not the worst thing that can happen to you when you go into work everyday. In fact, getting sued is not even the **second** worst thing that can happen to you. Actually, the second worse thing that can happen **HAS ALREADY HAPPENED...**

**#2 WORST THING THAT CAN HAPPEN:
LOW MORALE ...
YOU DON'T RUN THE PLACE ANYMORE!**

It is **laughable** to think that management runs things in most American workplaces. In reality, in most American workplaces, the bullies run things. These bullies have staked out their own little "Kingdoms of Nod." In these Kingdoms, the bullies run things. These bullies **own** these areas. Actually, it is like as if they have "peed" all around their desks and have marked "their" areas.

Why do I say that?

According to research conducted by David Yankelovich, in "The 50 Best Companies in America to Work For," the following is the national average of how much effort employees in the United States give to their employers:

- 23% Do The Best They Can**
- 34% Could Do More**
- 43% Do Just Enough So They Don't Get FIRED!**

Further, 20% more Americans have heart attacks on Monday morning than on any other day of the week. (CNN report on Thursday, February 3, 2005 as reported in the British Medical Journal.) In short, these people get a sick feeling in the pit of their stomachs on Sunday evening just over the thought of going back into that "hell-hole" on Monday. They "stew" on this all evening, which

places tremendous amounts of stress on their bodies, which also takes a tremendous toll on their family lives. Throughout the night, this tension builds to the point that their blood thickens from the tension and ... Viola!

Monday morning heart attack...

... which gives them a great excuse to call off from work. (Sometimes, you have to look very hard to find the bright side of things.)

Additionally, 77% of all Americans **HATE** their jobs. (2005 Gallup Poll) Why? According to various surveys, including those conducted by CareerBuilder.com and Scott Hunter, author of "Making Work Work" (Hunter Alliance Press, 2003), the top two primary reasons Americans hate their jobs are:

Bullying and Poor Supervision

This makes sense because if management was really running its workplaces effectively, the bullies would not control of the work environments, which means production levels would be higher and we would have fewer Americans waking up dead on Monday morning with heart attacks. (We would also have less workplace violence.)

You can always spot a workplace where the trolls are in charge by the things they say, such as...

- "You can't make me do that" or
- "That's not my job," or
- "They only get so much from me" and so on.

Why do we fail to enforce our rules? Why do we let the bullies take over? Well, there are many reasons, but letting the attorneys and the law dictate our business decisions are two big ones.

Well...let's see ... let's tally the carnage...

- ❖ Only 23% of Americans give their employers their best,
- ❖ 77% of all Americans hate going back into that "hell hole" everyday, and
- ❖ We have 20% higher heart attack rates on Monday morning than any other day of the week...but then...look at the bright side...

You didn't get sued!

And we *STILL* actually think the worst thing that can happen is getting sued?

NO! The worst thing that can happen ...

IS HAPPENING RIGHT NOW IN MOST AMERICAN WORKPLACES!!!

Again, let's tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

WHAT IS THE PROBABILITY OF THE BULLIES TAKING OVER?

VERY LIKELY...IF IT HAS NOT ALREADY HAPPENED!

(Which it *has* in most American Workplaces!)

WHAT IS THE CONSEQUENCE OF ERROR IF THE BULLIES TAKE OVER?

CATESTROPHIC!!!!

When the bullies take over, which is the norm in most American workplaces, then people start to hate coming into work. Call-offs go up. People are not as productive when they come into work. Mistakes committed on the job rise. In the end, the biggest part of our budget, labor, increases. This is the downward spiral of a failing organization.

#3 WORST THING THAT CAN HAPPEN:

A BAD HEADLINE!

Getting sued is not even the **third** worst thing that can happen to an organization. What is?
GETTING A BAD HEADLINE IN THE PRESS!

When an organization gets sued, it is always questionable what the public will believe ... if the public ever hears of the lawsuit in the first place. If an employee files a lawsuit against his/her former (or current) employer, the cost of the attorney's fees the organization incurs will admittedly be a major expense, one that could kill an organization. Additionally, if the organization loses the lawsuit, the subsequent judgment levied against it could also certainly kill it.

However, these are one time expenses. If the organization survives, it can rebuild.

On the other hand, in balancing the risk of a lawsuit against the cost of having a bad headline, the public can be very judgmental and unforgiving. In fact, the general population will usually believe whatever they see on TV or whatever half-truths they see on the front page ... and it will most likely be bad for the organization. (Remember: In the media "game," **"IF IT BLEEDS...IT LEADS!"** We **love** dirt in the press ... and if there is not any dirt to be found ... it is important for our "crack" reporters to "dig some up." The truth does not matter. Ratings and ad space matter.)

One bad headline can affect the profitability and the cash flow of an organization for *years* to come ... unlike the one-time hit of a lawsuit.

Additionally, the cost of most lawsuits is often dwarfed by the cost of waging a media battle. Newspaper space and media consultants are expensive. When Wendy's was battling the fraudulent story of a customer finding a finger in her chili, Wendy's spent millions of dollars and did a tremendous job of getting its message out to the public in order to counteract the negative press it was getting. Truck loads of time and millions of dollars later, Wendy's came out on top ... kind of.

Two years later, those Wendy's stores located in the area where the hoax took place have still not regained the sales figures they previously enjoyed. In human damage, many of those Wendy's employees who were laid off due to a drop in sales have still not been recalled to work.

But then...look at the bright side...

Wendy's did not get sued! (Hoo-ray!)

Also, when major employers look to move into an area, they look at many factors. However, one of the primary factors they look at are the demographics of the area and the general attitude of the people. Remember: The biggest part of most organizations' budgets is labor. Such organizations also look very closely at the local governments to see what they are like. How well are they run? Does the company want to be associated with this area and city? Many larger companies will actually use "scouts," which are individuals who are sent into an area to determine what the area is like.

Companies also consider their relations with the local unions. If they are unionized, what will the union be like? If you recall, Jim Gilbert, president of the Fraternal Order of Police Capital City Lodge No. 9, said the FOP is going to represent Purtee during the investigation and that, "... Purtee is entitled to her opinion."

With this story getting national attention, do you think employers are going to flock into Ohio knowing that even if employees make such statements that could easily be viewed to be "injurious" to the employer and her ability to do her job that the union will fight to retain this person? "Right to Work" states will certainly become much more attractive to employers ... if not many overseas locations.

Cincinnati was just named the third poorest city in the United States. Cleveland was right behind it at #4. In Columbus, one out of every five people live at or below the poverty level. (U.S. Census Bureau)

Do you really have to wonder why business is not coming to Ohio? Do we **REALLY** want the rest of the country to think that we will stand for this type of behavior by a public official ... an armed public official? Do you really think they would want to transfer their minority employees into an area that tolerates this kind of conduct?

Again, let's tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

WHAT IS THE PROBABILITY OF HAVING A BAD HEADLINE DUE TO PURTEE?

VERY GOOD!!!

(This story has *already* made the national news.
I heard about it when I was doing Tolerance Training in Dallas!)

WHAT IS THE CONSEQUENCE OF ERROR IF YOU HAVE A BAD HEADLINE?

CATESTROPHIC!!!
YOU LOSE PUBLIC TRUST FOR A LONG...LONG...LONG TIME!

And finally...

**#4 WORST THING THAT CAN HAPPEN:
A LAWSUIT!**

See ... the lawyers eventually get it right.

RISK ASSESSMENT: WHAT COULD HAPPEN IF COLUMBUS DID FIRE PURTEE?

On one hand, if Purtee is terminated, Columbus would indeed risk having a lawsuit filed against it. Purtee is a long-term public sector employee. That is always a risk.

But then, what are the chances Columbus would be able to successfully defend this lawsuit if it was sued by Purtee? Clearly, in light of the Roe decision, as well as its directive to its police officers, requiring that officer conduct themselves “at all times, both on and off duty, in such a manner as to reflect favorably on the division.” Officers are also not to engage in any behavior that “implicitly or explicitly brings the division into disrepute, reflects discredit upon the individual as a member of the division, or impairs the operation or efficiency of the division or the individual. This includes, but is not limited to, derogatory comments, gestures or insinuations.”

Clearly, Officer Purtee violated this standard.

RISK ASSESSMENT: WHAT COULD HAPPEN IF THE CITY OF COLUMBUS DOES NOT FIRE PURTEE?

If Columbus does not fire Purtee, how can she continue to function as a Columbus Police Officer? The first time she has an altercation with a suspect who happens to belong to a minority group she targeted in her videos, the city will very likely be looking the barrel of a “police

misconduct” lawsuit of some kind. Since her motives and actions are now clearly suspect, the chances the city will lose this lawsuit are actually very, very good.

Think of it this way: If Kramer (AKA: Michael Richards) takes a cab to LAX and the cabbie happens to be of color, and the cabbie accuses Kramer of using racial insults against him ... who will everyone believe? Kramer or the cabbie? Clearly, everyone is going to believe the cabbie because *that is the reputation Kramer has established for himself*. And remember: Proof is whatever a jury says it is in their eyes. If a jury believes it and says it is proof ... it is proof. (U.S. Supreme Court decision in Reeves v. Sanderson Plumbing Products, Inc., (99-536) 530 U.S. 133 (2000))

Further, prosecutors often rely heavily on the eyewitness testimony of police officers at trial. Defense attorneys will now have a field day with Officer Purtee. Impeaching her testimony for prejudice would be all too easy now.

Also, what are the chances Officer Purtee will be able to work with those minority groups employed by the city? What is the probability that she might be viewed one day as harassing a co-worker who belongs to one of those groups targeted in her videos? How will the city fare in that lawsuit?

In most of these types of cases, the city of Columbus would most likely have to bargain its way out by asking the plaintiff, “How many zeros would you like?”

RISK ASSESSMENT: FINAL BALANCING OF RISKS

Either way you go, there could be a bad result. That is life ... and it is full of risk. Decision making involves choosing the best result you hope you can achieve, as well as the devil you are willing to live with from your decision. There is rarely one clearly correct answer...only *better* ones.

You will *never* eliminate risk. You balance and manage risk.

There is always a pro and a con to every decision. The best you can hope for is to effectively manage risk. The trick here is to choose the path that has the lesser degree of risk with the greatest potential for a positive outcome.

Again, let’s tally the **PROBABILITY** of harm and the **CONSEQUENCE OF ERROR** (in case you guess wrong!)

WHAT IS THE PROBABILITY OF GETTING SUED IF PURTEE IS TERMINATED?

VERY GOOD

WHAT IS THE PROBABILITY OF GETTING SUED IF PURTEE IS NOT TERMINATED?

VERY GOOD

WHAT IS THE PROBABILITY OF LOSING A LAWSUIT TO PURTEE?

NOT GOOD

WHAT IS THE PROBABILITY OF LOSING A LAWSUIT TO SOMEONE ELSE IF PURTEE IS NOT TERMINATED?

VERY GOOD

In this case... yes... if Columbus fires Purtee, Columbus will most likely get sued. But then, that is not necessarily the worst thing that can happen. When you assess the risk of this lawsuit against the other risks the city could and certainly would encounter if it did not terminate her, this is a much easier call to make.

Viewing this situation from the standpoint of avoiding the immediate lawsuit from Purtee gives us “tunnel vision.” Columbus would be trading a small and short-term win for a long-term disaster.

A good leader “assesses” and balances risk. There is **always** going to be risk. You have risk driving into work each day, getting up in the middle of the night and going to the bathroom, etc. You can never eliminate it. You must assess it and manage it. If you try to avoid it, you will leave so many “landmines” behind you that you that one day you will be boxed in by your previous failure to act. It will become a self-fulfilling prophesy.

Therefore, if you were the decision maker and analyzed in this situation in light of these four potential risks ...

What risks would you be willing to incur?

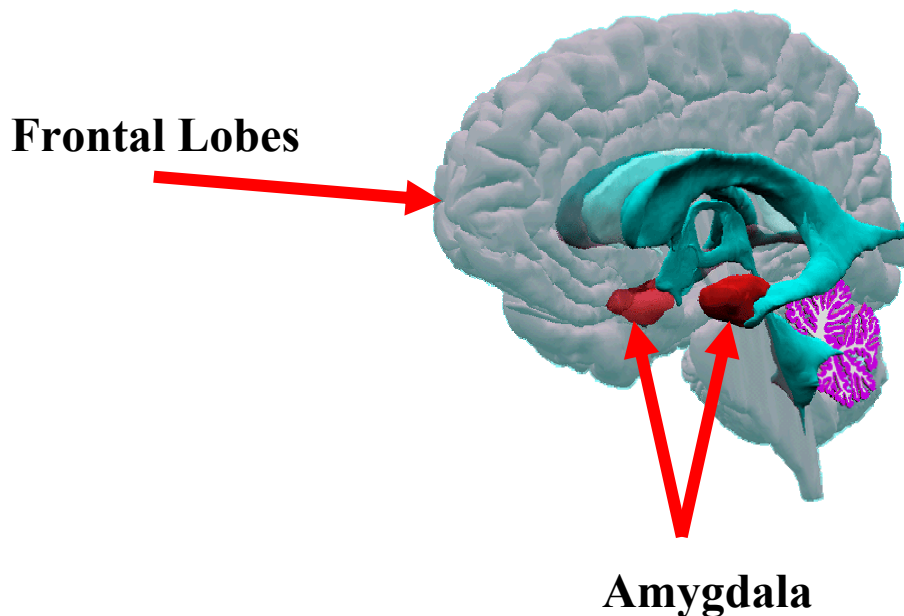
OUR SUBCONSCIOUS MIND, BIGOTRY AND OUR ACTIONS



IQ vs. EQ

Which is Stronger ... Logic or Emotions?

Different parts of our brain do different things, as shown in the following diagram:



Keep this diagram in mind as we examine what parts of the brain do what.

LIMBIC SYSTEM

The **limbic system** is primarily involved in controlling our emotions and sexual activity.

AMYGDALA

The **amygdala**, which resembles two almonds resting on either side of the brain, is part of the body's limbic system. It is the amygdala that controls *all* of our passions. It is the body's emotional center. In other words, it reacts in response to pleasant and unpleasant sights, sounds, smells, taste and touch. Laughter, joy, anger, avoidance, defensiveness and ego are all emotions that are activated by the amygdala. The amygdala therefore acts as the brain's "**Emotional Tripwire.**"

The amygdala is also responsible for activating many of the nonverbal reactions we *automatically and unconsciously exhibit*, such as "tightened lips" and frowning when we are distressed, assuming a lowered defensive posture such as "crouching" when we are attacked, wrinkling our nose when we smell something bad, pursing our lips and pulling away when we taste a lemon, and so on. These are all automatic reactions our emotional system uses as it tries to protect us from harm.

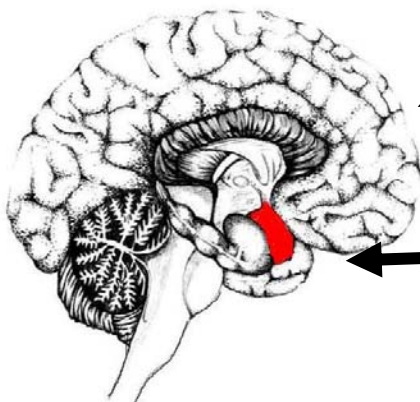
FRONTAL LOBES

The frontal lobes control such functions as our attention span, ability to focus, decision making, judgment, organization, ability to control impulses, etc. Commonly, these functions are referred to as "**Executive Functions.**" The frontal lobes in human beings comprise 30% of the brain, which is also the largest set of frontal lobes in the animal kingdom. This is the part of the brain that makes us human.

The left frontal lobe in particular has a very important job in relation to the amygdala. While the amygdala acts as the brain's "**Emotional Trigger,**" the left frontal lobe acts as the "**Neural-Thermostat**" for our emotions. This of it this way:

What the amygdala GENERATES ... the left frontal lobe CONTROLS

However, in trying to control our emotions, the frontal lobes are at a distinct disadvantage.



FRONTAL LOBES: LOGIC

- *Further from Brain Stem*
- *1/6,000 Reaction Time*

AMYGDALA: EMOTIONS

- *Closer to the Brain Stem*
- *1/12,000 Reaction Time*

- First, a stimulus of some kind enters the brain, either through the skin, eyes, ears, nose, etc. In stressful situations, since the amygdala, our emotions, is located very close to the brain stem, it can receive messages in 1/12,000 of a second.
- However, our frontal lobes, the center of our reasoning and the “Neurological Thermometer” for the amygdala, are located much further away from our brain stem. As a result, the frontal lobes are at a *huge disadvantage* since it takes 1/6,000 of a second for a message of impending danger to reach them ... which is *twice as long* as it took this same message to reach the amygdala.

This is why we can react so quickly and swat a mosquito on our arm before we even cognitively know what we are doing.

In the end, our emotions can easily overtake our logic. The amygdala takes control of our actions because it is capable of triggering our emotions long before the frontal lobes even know what is happening.

UNINTENTIONAL BIGOTRY: When Our Subconscious Rules

One thing we know about the amygdala is that it has a memory of its own. It does not need the frontal lobes to function. This fact goes to our most basic need for consistency and our deep desire to resist change.

Dr. Joseph Ledoux, a neuroscientist at the Center for Neural Science at New York University, was the first scientist to discover the key role the amygdala plays in our emotional brain. In one experiment conducted by Dr. Ledoux, people were shown flash cards containing certain geometric shapes ... but these people were shown these shapes so quickly that they did not have any conscious memory of having seen them. When they were later shown these same geometric shapes, they preferred the shapes that were flashed in front of them *rather* than the other shapes that were not shown to them.

Therefore, even though these people had *no conscious memory* of having seen these shapes, their subconscious memory in the amygdala *did see the shapes and remembered them later*. Since the human emotional system likes familiarity, the people gravitated towards the shapes their subconscious mind saw and remembered. In other words, the subconscious mind is *real* and it exerts a tremendous influence over our behavior ... whether we want to admit it or not.

Marketing professionals have understood this concept for years. Consider the beer industry. Everywhere you look, you will see commercials for beer. Commercials for Miller, Budweiser, Coors and so on are all around us. Why? None of these companies expect you to get up and run out to the store and buy their product if you see a commercial or an advertisement. What they want you to do is remember their ad or their slogan when you shop for beer.

What is an aluminum can made from?

Well...how did you do? An aluminum can is made from aluminum, not tin, right?

Let's try another one. Say the word "TOP" ten times quickly then immediately answer the following question:

TOP, TOP, TOP, TOP, TOP, TOP, TOP, TOP, TOP, TOP!

What do you do you do at a green light?

Well...how did you do? You "go" at a green light, right? You don't stop, right?

Let's try another one. Say the word "JOKE" ten times quickly then immediately answer the following question:

JOKE, JOKE, JOKE, JOKE, JOKE, JOKE, JOKE, JOKE, JOKE, JOKE!

What do you call the white part of an egg?

Well...how did you do this time? The white part of the egg is the white part of the egg...right? It is not the "yolk," right? You could have also said "ovalbumin," which is the white part of the egg. Of course, the reason you probably did not say "ovalbumin" is because it was not in your mind at all. You cannot "blurt out" what is not there.

This exercise works because of the amygdala. The amygdala can be programmed to respond automatically, either consciously or subconsciously. Why? Because it is a defense mechanism designed to protect us. We automatically react without the use of our thinking brain: our frontal lobes.

This phenomenon gives us a certain comfort level due to "familiarity."

This is why, as a recent study just proved, kids will eat just about anything if it is wrapped in a McDonald's package, as seen in the August 7, 2007 edition of the Chicago Daily Herald.

Big Picture  DuPage County Focus

It's the Cubs
Mike Inrem would like to be positive about them, but... — Sports

Little Kevin
is all grown up Savage is a new dad with a new movie — Back Page

Daily Herald

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D124

Brand loyalty at age 4?

Apparently, kids do love that clown. "You see a McDonald's label, and kids start salivating," says Diane Levin, a childhood development specialist who campaigns against advertising to kids. Levin can't be too happy with results of a new study that shows preschoolers think anything made by McDonald's tastes better. Even carrots, milk and apple juice tasted better to the study's subjects when they were wrapped in the familiar packaging of the Golden Arches. The study will likely stir more debate over the movement to restrict ads to kids.



READ MORE ABOUT THIS STUDY ON PAGE 8.

Our children have been so conditioned to just “RESPOND” to a McDonald’s logo that many will even eat carrots if they are wrapped in a McDonald’s package. They don’t think ... they just REACT!

This “automatic response” comes in very handy for us in our daily lives. Many of us often get dressed in the morning, eat breakfast, drive to work then sit at our desk and think, “How did I get here?”

We have routines we follow. Humans are definitely creatures of habit and the amygdala is why. We function in many different ways every day without even thinking about how we do it.

We notice this affect when we wonder if we have forgotten to lock the house. We probably did ... but we don’t remember doing it because we probably did it automatically. You can’t remember if you did or not because your frontal lobes were not part of the process. Your amygdala, or your subconscious, took care of it for you.

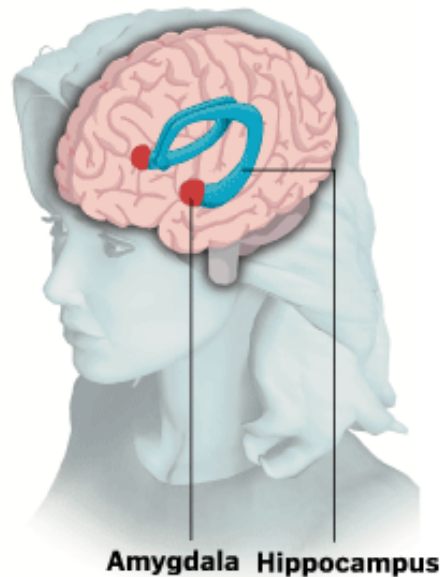
This is also why they make those little pill boxes with all of the different days of the week on them. Why? Because most of us run on autopilot in the mornings, so we cannot remember whether we took our pills or not. Chances are that we did because it was an automatic function for us, but that still doesn’t keep us from worrying about it for the rest of the morning.

Status quo...status quo...status quo is the hallmark of emotional security.

It is important to not only understand that our subconscious mind lives in our amygdalas, but they are also pretty close to being fully formed upon our birth. However, our Hippocampus, which governs our short term memory, is not really formed until about the age of three. As a result, we tend not to remember being born, nor do we consciously remember much about our

first three years of life. So, if everything we hear, see, feel, taste and otherwise experience in our first three years as a child cannot go into our short term memory ... where does it go?

RIGHT! Into our amygdalas, or our subconscious. It will remain there for the rest of our lives.



So, if we grow up in a loving and caring household, those feelings and “memories” will be stored away into our subconscious. That is how we think people should act towards one another. On the other hand, if we grow up in a household where there is constant yelling and abuse, as well as possibly racial and other types of ethnic slurs, those memories will be stored in the child’s subconscious as well.

As a result, we all grow up hearing various stereotypes about other kinds of people. We also develop a level of comfort with other kinds of people ... most likely people who look, talk and act like us. In the end, this “gut feeling” we have about other people can be quite dangerous. That gut feeling may be our bigotry surfacing that was planted there decades ago.

The key here is self-awareness ... self-awareness ... self-awareness brings these feelings and beliefs to the surface so we can be more *mindful of our own actions and behaviors*. Even though we cannot get these ideas out of our heads once they are in there, just as you will never get the Budweiser logo out of your head, you **CAN** stop and become more mindful in what you do.

Being more mindful of our thoughts and who we are as individuals is how we will conquer these thoughts. This is why you got better at the “Repeat After Me 10 times” game once you *stopped and thought before you answered*:

You caught yourself before you said something wrong.

Of course, the concern now is:

Does the way Ms. Purtee thinks disqualify her from being an armed public official entrusted with making split second life and death situations?

This poses an interesting dilemma. We certainly do not want to become “mind police.” However, when one’s bigoted views begin to harm your employer ... and they begin to threaten its reputation and ability to function, a different situation arises, as previously discussed.

More importantly, Ms. Purtee has shown no desire or effort to become more self-aware. “Self-Awareness” is the first and perhaps the most critical step in becoming an Emotionally Intelligent or mature person. We all have shortcomings and bigoted beliefs. We are all human ... and it is never a compliment to call someone that.

However, many of us strive to continually become more self-aware of our faults and try to improve. We strive to learn about others with whom we interact so we can recognize our deep-seeded stereotypes as being wrong. This involves becoming a more “mindful” person and not just running on automatic when we interact with people we do not understand ... relying on these age-old prejudices.

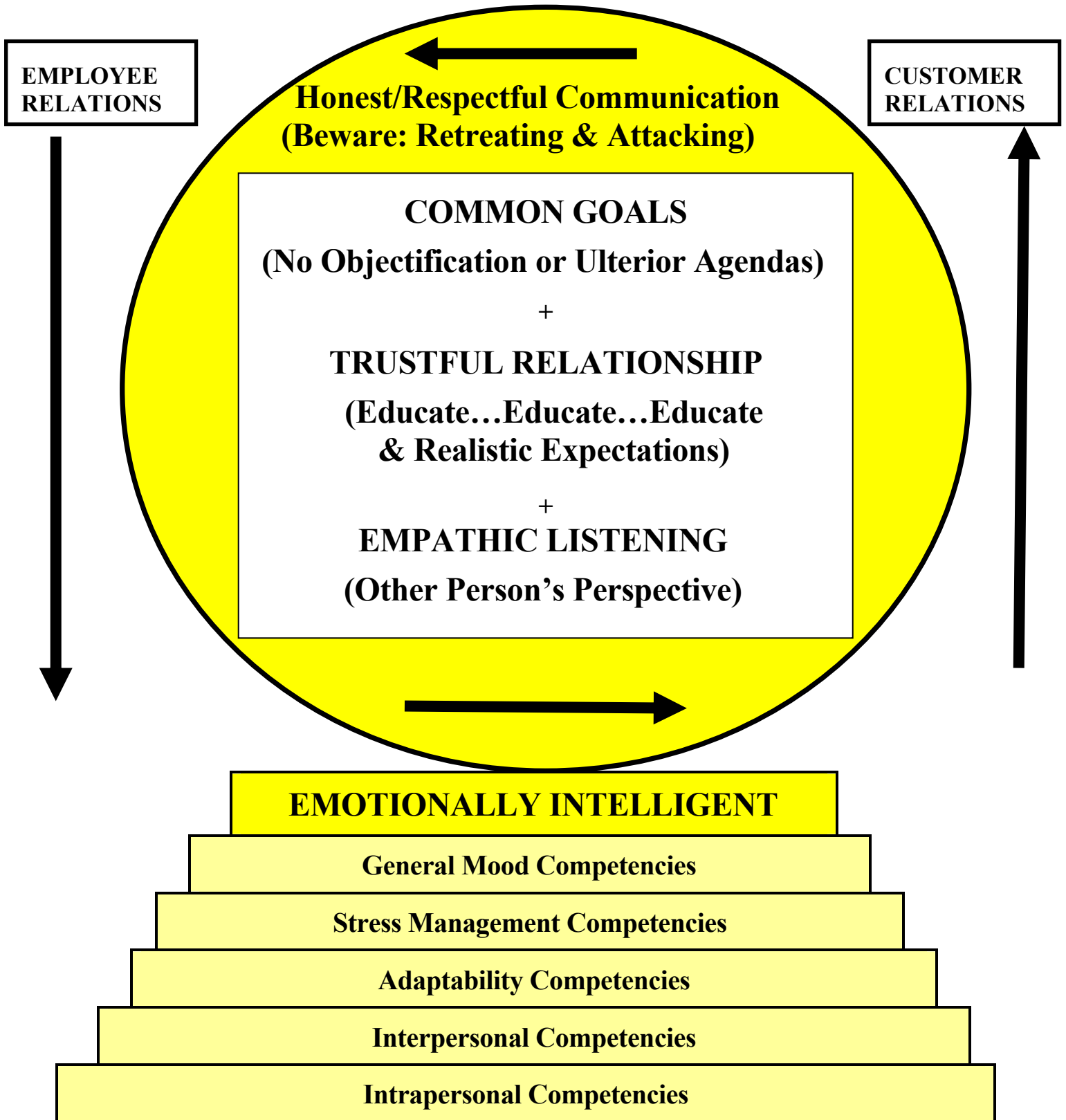
Just as you became more mindful in the “Repeat After Me 10 times” game as we played it again and again and again, we can all discover our flaws and become more mindful of their influence over our behavior. We can improve only when we become more self-aware and learn about people who are different from us.

This is the good news about our E.Q. (Emotional Quotient):

We can improve upon it ... but only if you want to.

Unfortunately, Officer Purtee has shown no desire to engage in such self-awareness or to learn about those groups of minorities she has disparaged. This is of course her right, but I certainly do not think she should continue to have the privilege of being an armed public official making split-second decisions when most of us think aluminum cans are made from tin.

EMOTIONALLY INTELLIGENT COMMUNICATOR



EMOTIONALLY INTELLIGENT COMMUNICATOR ANALYSIS

Having examined the legal aspects and the various risks of this situation, it is time to move onto another aspect: the Emotionally Intelligent Communication perspective.

RETREAT, ATTACK & HONEST RESPECTFUL COMMUNICATION

Clearly, Officer Purtee's style of communication here is one of "Attack." Even though she remains calm and even "whimsical" when she is making her comments, her entire message is one of "Attack." It is one of hate and exclusion.

Office Purtee and her sister rely on age-old stereotypes and myths regarding Jews, African Americans and numerous other groups of people. Perpetuating messages of hate and calling for the exclusion of entire groups of people without any consideration for the individuals who belong to these classes is without a doubt an "Attack" against her targets.

Far too many people in our society feel that whenever they are right, they can "tell it straight" or they "tell it like it is" and offend anyone they want since they believe they have the facts on their side. America sees this type of behavior every week on "American Idol."

However, using such a communication style is very destructive. When most people are attacked, they react in very predictable ways. The traditional "Fight or Flight" response is engaged. As a result, some people will retreat, which kills communication, while others will attack back, which also kills communication.

Very few people will ever cooperate with an "attack" style communicator. Such a style is offensive and people will react in very predictable ways ... and, deep down, most everyone knows it.

For instance, if you go to a drive through to order food, try attacking the order taker. Look into the speaker, give them your order, then shout,

"And I don't want any of you morons in there spitting on my food!"

Guess what will happen?

But you were just being honest. You were just telling them the truth. You just told them straight:

You ***really don't*** want anyone spitting on your food.

Still, far many people simply attack others when they communicate and they feel perfectly justified in doing so because either they are just "telling it like it is" or they "feel very strongly about this issue." Either way, the end result will be disastrous.

Of course, since we are considering Ms. Purtee's position as a Columbus Police Officer, the key question to ask is:

Does Officer Purtee’s “Attack” style and hate messages harm the employer?

Well, considering the previous discussion in the “Brainwashed” section, what do you think?

The only positive thing I can say about Officer Purtee’s video tapes is that she clearly is not a “Retreater.” She will not talk about you behind your back. Instead, it is clear how she feels and she is very honest in her comments.

What is a “Retreater”?

“I would never say anything to your face, because I am a nice person. So, I will wait until you leave, and then stab you in the back ... because I’m a nice person.”

This is how we get so much vicious gossip in our lives. It always reminds me of the old saying:

“If you don’t have anything nice to say about somebody, come sit next to me.”

Such a style destroys trust. It creates “jungle” environments in our work lives where people have to put their backs against the wall so no one “gets them.”

The “Retreater” style of communication also explains why so many marriages in this country fail. I will conduct this session for marriage counselors in E.I. Communication and I *always* hear the same thing from them. They come up and tell me:

“Yes! That is it! It’s that Retreater Style! I see this all the time in my practice. People come in and pay me \$100.00 to \$150.00 an hour to talk about things they should have been talking about at the kitchen table for the last five years!”

Engaging in hate messages is an easy way to spot an “Attacker, and it will destroy any organization.

COMMON GOALS, TRUST BUILDING and EMPATHIC LISTENING

The rest of this analysis is easy:

COMMON GOALS

- What is the goal of the Columbus Police force? To “protect and serve” the community?
- Are Officer Purtee’s comments going to assist or hinder the Columbus Police force in pursuing this goal?

TRUST BUILDING

- Do Officer Purtee’s comments help to build trust or destroy it with the community she serves?

- Are Officer Purtee’s comments going to assist or hinder the trustbuilding within the Columbus Police force itself?

EMPATHIC LISTENING

- Is Officer Purtee going to be able to listen “empathically” to the citizenry she is sworn to “protect and serve”? (“Empathic” listening is the ability to listen from the *other person’s perspective*, which includes those people who were the targets of her hate messages.)
- Even if she is able to do this, is her credibility for being impartial destroyed?
- Will the public then project this same lack of credibility against other Columbus Police Officers ... as well as city administration?

CONCLUSIONS

Officer Purtee’s case is rich for analysis. It has everything. It has the legal aspect ... the “Risk Analysis” aspect, the questions regarding her subconscious, the aspect of Emotional Intelligence in our society, and how we communicate. It has everything, which is why we have spent so much time discussing this topic.

However, after all of the various analyses are done, the bottom line here is actually rather simple:

Do Officer Purtee’s actions help or hinder the Columbus Police Department’s goal of protecting and serving the public?

Officer Purtee was not hired to write tickets. She was not hired to control crowds. She was not hired to drive a patrol car. Employees are hired to help their employer meet their goals, both on and off the job. They are paid for this purpose, which far too many of us forget. That is the employee’s common law duty of loyalty: To help the employer reach its goals. When an employee becomes a hindrance to the employer, then the employer is not receiving the “benefit of its bargain” for the wages it is paying to the employee. It is at that point the employee must go.

Of course, we cannot forget that in a time when trust in our government is at an all time low, we have a public official who is entrusted with enforcing our laws that conducts herself in a manner that directly parallels the Nuremburg Laws of 1935 in Nazi Germany and “Eugenics,” which is the “science” that professes that certain people are genetically superior to others.

Government sanctioned, condoned and enforced murder, lynching, genocide, the forced sterilization of “inferior” people (Which was upheld by the United States Supreme Court in 1927, by the way.) denial of the use and access to our judicial, electoral and educational systems to entire classes of people and police brutality have all occurred here in the United States. If we want our citizenry to have any trust in the system that is supposed to be “for the people,” if we truly want to overcome the more disgraceful truths of our past, we cannot allow such conduct to

exist in our government period.



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Scott travels the country presenting his revolutionary “**ANTS, Trolls And Emotionally Intelligent Communicators**” and his “**Intolerance of Intolerance: Skill-Based Diversity/Tolerance Program,**” which focuses on the **FOUR BASIC SKILLS** needed to combat **ANY** type of bigotry/bullying employees encounter in the workplace, rather than the traditional “Cultural-Based” types of programs that focus on only a few select different cultures.

Scott’s clients include Ohio Department of Administrative Services, The Gap, Area Agency on Aging, Skyline Chili, The Ohio Supreme Court, Heinz Frozen Foods, Fayette County Hospital, Honeywell, Caraustar International, Utah State Workforce Development and International Truck and Engine.

Scott’s academic background and awards include:

- Masters degree in Labor and Human Resources: The Ohio State University
- Capital University College of Law (Class Valedictorian (1st out of 233))
- The Human Resource Association of Central Ohio’s Linda Kerns Award for Outstanding Creativity in the Field of Human Resource Management and the Ohio State Human Resource Council’s David Prize for Creativity in Human Resource Management

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